

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET
JUL 09 2007

IN RE:) CHAPTER 13
)
MARK EVANS PULLEN and)
MARY KAY PULLEN,) CASE NO. 07-65415-MHM
)
Debtors.)

ORDER
VACATING ORDER MODIFYING STAY;
AMENDING ORDER EXTENDING STAY;
DENYING RULE 60(b) MOTION;
DENYING REQUEST FOR DEBTORS' TAX RETURNS;
DENYING MOTION TO DISMISS;
DENYING MOTION FOR PROTECTIVE ORDER; and
CONTINUING HEARING ON CONFIRMATION

This case commenced April 2, 2007. Hearings were begun or continued June 22, 2007, on:

- (1) the motion of Cain Harris ("Harris") to modify the stay to validate the foreclosure sale held April 3, 2007, following entry of an emergency order permitting the sale to be cried out, but not completed and prohibiting Harris from recording the deed until further order of the court (the "Motion to Validate").
- (2) Debtors' motion to extend the stay (the "Motion to Extend"): an order was entered May 11, 2007, although a docket entry showed the hearing on the motion was continued to May 22, 2007.
- (3) Confirmation of Debtors' Chapter 13 plan;

- (4) Harris' Rule 60(b) motion to alter or amend the order entered May 11, 2007, extending the stay (the "Motion to Alter or Amend").
- (5) Debtors' motion for protective order, seeking an order denying Harris' request for Debtors to provide Harris with a copy of Debtors' tax return.
- (6) At the hearing, Debtor and Harris noted that Harris had filed a motion to dismiss because Debtors had failed to comply with Harris' request for copies of their tax returns. Harris represented that he was content for the court to decide the motion to dismiss on the written pleadings without hearing.

(1) Motion to Validate

This case commenced April 2, 2007, with the filing of Debtors' Chapter 13 bankruptcy petition. On Tuesday, April 3, 2007, Harris filed a motion seeking emergency relief from the automatic stay to allow Harris to proceed with a foreclosure sale of the one-half undivided interest of Debtor Mary K. Pullen in Debtors' residence, 330 Jade Drive, Roswell, Georgia (the "Property"). The motion provided a sketchy, disjointed, and incomplete recitation of the pertinent underlying facts.¹ As is the practice of the undersigned when a motion alleges that a debtor has filed at least one prior case on the eve of foreclosure, an order was entered allowing Harris to cry out the foreclosure sale but

¹ For example, although Harris disclosed that Debtor Mark Pullen's one-half undivided interest in the Property was levied upon by the Fulton County Marshall and sold at auction, Harris did not disclose that the levy occurred as a result of a judgment and *fi. fa.* held by Harris father, to which Harris had voluntarily subordinated his security interest in the Property. Harris also disclosed that he was the assignee of Debtors' first mortgagee but failed to disclose that Harris had sought and obtained an assignment of the first mortgage with the intent of subordinating it to accord a superior position to his father's later judgment lien. Harris' father represents Harris as attorney in these proceedings.

prohibiting Harris from recording the deed transferring title to the Property or taking any other action against Debtor or the Property. Having now obtained a fuller explication of the facts surrounding the dispute between Harris and Debtors, the undersigned is now convinced that Debtors filed this bankruptcy case in good faith in a legitimate attempt to protect their property and to reorganize. Therefore, the order entered April 3, 2007, granting Harris' emergency motion to modify the stay is *vacated*.

(2) Motion to Extend

On April 10, 2007, Debtor filed a motion under 11 U.S.C. §362(c)(3) to extend the automatic stay. Harris filed an objection to continuance of the stay. Hearing was held May 1, 2007. At the conclusion of that hearing Debtor's motion was granted. Although a docket entry dated May 4, 2007, set forth that the hearing on the motion to extend the stay was continued to May 22, 2007, that docket entry conflicts with the provision in §362(c)(3), which requires *completion* of the hearing within 30 days after the petition was filed, and therefore was in error.

As provided in BLR 9013-2(a)(1), the attorney for the party prevailing at the hearing is charged with preparing and presenting a proposed order. Debtor's attorney prepared and presented a proposed order, which was entered May 11, 2007. The order that was entered, however, contains an incomplete statement of the facts regarding the dismissal of Debtors' prior case, and will be modified.

A review of the record in Debtors' prior case shows that it was not dismissed solely based upon Debtor's failure to pay advices. The case was dismissed at confirmation, not

pursuant to the §521(i) automatic dismissal provision.² The dismissal resulted from numerous objections to confirmation filed by the Chapter 13 Trustee ("Trustee"), of which the failure to file pay advices was only one and was not the most serious objection to confirmation. Pending at the time of confirmation was Harris' motion to dismiss for failure of Debtor to file pay advices. Debtors' attorney argued at the hearing held June 22, 2007, that he had reviewed the extant law regarding the filing of pay advices and concluded that Debtor had no defense to that objection or the motion to dismiss and, therefore, decided that he would not waste his time attempting to or completing the cure of any of the other objections to confirmation. Although that conclusion of Debtors' attorney may have been premature or even incorrect, it does not establish bad faith on the part of Debtors.

A much more complete picture of Debtors' circumstances, financial condition, and of the basis of Harris' claims was revealed at the hearing held June 22, 2007. Although the facts recited in the order entered May 11, 2007 may not have completely and accurately presented the facts relevant to Debtors' good faith in the filing of the instant case, a fuller disclosure of the facts does not alter the conclusion of that order. Debtors have presented a plan which may be confirmable and the facts support the conclusion that Debtors have not only filed this case in good faith but need the breathing spell afforded to every debtor who fervently desires an opportunity to reorganize and pay debts in an orderly manner. Therefore, the order extending the stay should be modified as set forth above and ratified.

² Harris did file a motion to dismiss Debtors' case under §521(i), but Debtors' case was dismissed before that motion was considered.

Additionally, Harris asserts that the cases cited in the May 11, 2007 order prepared by Debtor's attorney were not correctly applied to the facts of Debtor's case. Although the cases cited may not have been correctly applied to the facts as they existed, a complete analysis is unnecessary because, in a recently announced opinion, the undersigned concluded that such an analysis is unnecessary. By order entered June 4, 2007, in *In re Ajaka*, Case No. 06-64920, the undersigned concluded that §362(c)(3) does not apply to property of the estate. Therefore, Debtor's motion to extend the stay was unnecessary.

(3) Confirmation of Debtors' Chapter 13 plan

Trustee filed a number of objections to confirmation of Debtors' Chapter 13 plan, many of which have been addressed or corrected by Debtors.³ Nevertheless, issues that remain or were raised at the June 22 hearing must be addressed, especially with respect to the Property: the claims secured by the Property and the interest in the Property held by Helen Li, who purchased Mr. Pullen's one-half undivided interest in the Property prepetition and whether the second priority lien of SunTrust survived the sale to Mrs. Li or was extinguished as if the property had been foreclosed by the first mortgage holder. Therefore, confirmation hearing will be continued as set forth below.

(4) Motion to Alter or Amend

The conclusions set forth above in (2) regarding Debtors' motion to extend effectively moot the arguments and relief sought in the Rule 60(b) Motion to Alter or Amend. That motion will be denied.

³ Harris, however, failed to timely file an objection to confirmation.

**(5) Debtors' motion for Protective Order from Harris'
Request for Debtors' Tax Returns**

At the commencement of the June 22 hearing, Trustee reviewed on the record the pertinent facts revealed by Debtors' tax return. Irrespective of whether Harris complied with the procedural safeguards promulgated by the Director of the Administrative Office of the United States Courts pursuant to Section 315 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Harris offered no argument or support for the need or use for additional information from Debtors' tax returns. Indeed, Harris appears to seek the tax returns only because the statute appears to grant it as an unfettered right. Moreover, Harris' actions and arguments belie *animus* as the only reason to seek further information from Debtors' tax returns and thus amounts to nothing more substantive than harassment. Therefore, Debtors' motion for a protective order should be granted and Harris' request for Debtors' tax returns should be denied.

**(6) Harris' Motion to Dismiss because Debtors failed to
comply with Harris' request for copies of their tax
returns**

The conclusions set forth above in (5) regarding Harris' request for copies of Debtors' tax returns and Debtors' motion for protective order effectively moot Harris' arguments in favor of dismissal. That motion will be denied. Accordingly, it is hereby

ORDERED that:

(1) The emergency order permitting Harris to cry the foreclosure sale of Debtors' real property April 3, 2007 is **vacated** and the motion of Cain Harris to validate the foreclosure sale is **denied**;

(2) The order entered May 11, 2007 extending the automatic stay of 11 U.S.C. §362(a) is **ratified** as modified herein;

(3) The confirmation hearing on Debtors' Chapter 13 plan is continued to 10:30 a.m. on the 27 day of July, 2007, in Courtroom 1204, U.S. Courthouse, 75 Spring Street, SW, Atlanta, Georgia.

(4) Harris' Rule 60(b) motion to alter or amend the order entered May 11, 2007, is **denied**;

(5) Harris' request for copies of Debtors' tax returns is **denied** and Debtors' motion for protective order is **granted**; and

(6) Harris' motion to dismiss because Debtors failed to comply with Harris' request for copies of their tax returns is **denied**.

The Clerk is directed to serve this Order upon Debtors, Debtors' attorney, attorney for Cain Harris, the Chapter 13 Trustee and all creditors and parties in interest.

IT IS SO ORDERED, this the 6th day of July, 2007.


MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE